

95 • 853 NOV 29 1995
No. _____

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In The
Supreme Court of the United States
October Term, 1995

M.L.B.,

Petitioner,

vs.

S.L.J., INDIVIDUALLY, AND AS NEXT FRIEND
OF THE MINOR CHILDREN, S.L.J. AND M.L.J.,
AND HIS WIFE, J.P.J.,

Respondents.

Petition For Writ Of Certiorari
To The Supreme Court Of Mississippi

PETITION FOR WRIT OF CERTIORARI

*ROBERT B. McDUFF
771 North Congress Street
Jackson, Mississippi 39202
(601) 969-0802

DANNY LAMPLEY
ACLU/M Cooperating Attorney
Post Office Box 7245
Tupelo, Mississippi 38802
(601) 840-4006

MARINA HSIEH
Boalt Hall School of Law
University of California
Berkeley, California 94720
(510) 642-4474

Counsel for Petitioner

*Counsel of Record

51 MP

QUESTION PRESENTED

In a State that provides appeals as a matter of right from adverse lower court decisions terminating parental rights, may the State, consistent with the due process and equal protection clauses of the Fourteenth Amendment, condition those appeals upon a parent's ability to pay appeal fees in excess of two thousand dollars?

PARTIES

Due to certain provisions of Mississippi law regarding appeals involving minors, initials were used to denote the parties in the appeal to the Supreme Court of Mississippi. However, the parties' full names are contained in the pleadings of the Chancery Court of Benton County, Mississippi, see Pet. App. 8.

Defendant/Counter-Plaintiff/Appellant: M.L.B.

Plaintiffs/Counter-Defendants/Appellees: S.L.J., individually and as next friend of his minor children, S.L.J. and M.L.J., and his wife, J.P.J.

The Defendant/Counter-Plaintiff/Appellant is the Petitioner here.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	8
I. THE DECISION OF THE SUPREME COURT OF MISSISSIPPI RAISES AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW, AND CONFLICTS WITH THE REASONING OF THIS COURT'S DECISIONS IN <i>GRIFFIN v. ILLINOIS</i> , 351 U.S. 12 (1956), AND <i>BODDIE v. CONNECTICUT</i> , 401 U.S. 371 (1971)	9
II. THE DECISION OF THE SUPREME COURT OF MISSISSIPPI CONFLICTS WITH DECISIONS OF THE SUPREME COURTS OF OHIO, MICHIGAN, ARIZONA, VERMONT, AND FLORIDA, AND OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT	20
CONCLUSION	23

TABLE OF AUTHORITIES

	Page
CASES	
<i>Addington v. Texas</i> , 441 U.S. 418 (1979)	21
<i>Bankers Life & Casualty Co. v. Crenshaw</i> , 486 U.S. 71 (1988)	9
<i>Boddie v. Connecticut</i> , 401 U.S. 371 (1971)	<i>passim</i>
<i>Britt v. North Carolina</i> , 404 U.S. 226 (1971)	5
<i>Griffin v. Illinois</i> , 351 U.S. 12 (1956)	<i>passim</i>
<i>Grove v. State</i> , 897 P.2d 1252 (Wash. 1995)	22
<i>In Re L.G.</i> , 603 A.2d 381 (Vermont 1992)	20
<i>In the Matter of Appeal in Pima County Juvenile Action No. J-46735</i> , 540 P.2d 642 (Ariz. 1975)	20
<i>Lassiter v. Department of Social Services</i> , 452 U.S. 18 (1981)	7, 12, 13, 18, 19
<i>Lecates v. Justice of the Peace Court No. 4</i> , 637 F.2d 898 (3rd Cir. 1980)	21
<i>Life & Cas. Insurance Co. v. Walters</i> , 200 So. 732 (Miss. 1941)	1, 6
<i>Lindsey v. Normet</i> , 405 U.S. 56 (1972)	9, 15
<i>Long v. District Court of Iowa</i> , 385 U.S. 192 (1966)	16
<i>Mayer v. City of Chicago</i> , 404 U.S. 189 (1971) ..	5, 11, 12, 16
<i>Moreno v. State</i> , 637 So.2d 200 (Miss. 1994)	1
<i>Murray v. Giaratano</i> , 481 U.S. 551 (1987)	16
<i>Nelson v. Bank of Mississippi</i> , 498 So.2d 365 (Miss. 1986)	1, 6
<i>Ortwein v. Schwab</i> , 410 U.S. 656 (1973)	17

TABLE OF AUTHORITIES – Continued

	Page
<i>Petit v. Holifield</i> , 443 So.2d 874 (Miss. 1984)	14
<i>Reist v. Bay County Circuit Judge</i> , 241 N.W.2d 55 (Mich. 1976)	20
<i>Rinaldi v. Yeager</i> , 384 U.S. 305 (1966)	16
<i>Ross v. Moffitt</i> , 417 U.S. 600 (1974)	15, 16, 17, 18
<i>Santosky v. Kramer</i> , 455 U.S. 745 (1982)	7, 12, 13, 21
<i>Scott v. Illinois</i> , 440 U.S. 367 (1979)	16
<i>Shuman v. State</i> , 358 So.2d 1333 (Fla. 1978)	20
<i>State ex rel. Heller v. Miller</i> , 399 N.E.2d 66 (Ohio 1980)	20
<i>United States v. Kras</i> , 409 U.S. 434 (1973)	17
<i>Vance v. Lincoln County DPW</i> , 582 So.2d 414 (Miss. 1991)	13
<i>Webb's Fabulous Pharmacies v. Beckwith</i> , 449 U.S. 155 (1980)	7
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	
U.S. Const., Amendment XIV	<i>passim</i>
28 U.S.C. § 1257	2
Miss. Code Ann., § 25-7-1	4
Miss. Code Ann., § 25-7-13(6)	4
Miss. Code Ann., § 93-15-103	3
Miss. Code Ann., § 93-15-109	3, 13
Miss. Rule of App. Proc., Rule 10	4

TABLE OF AUTHORITIES – Continued

	Page
Miss. Rule of App. Proc., Rule 11.....	4, 9
Miss. Rule of App. Proc., Rule 16.....	4
Miss. Rule of App. Proc., Rule 17.....	4
OTHER	
Luther T. Munford, <i>Mississippi Appellate Practice</i> , § 7.6 (1995)	4

PETITION FOR WRIT OF CERTIORARI

The petitioner, M.L.B., whose parental rights to her children were terminated by the Chancery Court of Benton County, Mississippi, respectfully requests that a writ of certiorari issue to the Supreme Court of Mississippi, which refused to permit her appeal from the adverse termination decision because of her financial inability to pay to the Court appeal fees, including record preparation fees, in excess of two thousand dollars. This was done pursuant to the Mississippi Supreme Court's uniform practice of automatically prohibiting any sort of in forma pauperis appeal in a civil case, regardless of the subject matter of the case or the interests that are implicated. See, *Moreno v. State*, 637 So.2d 200 (Miss. 1994) (in forma pauperis appeals are not permitted in civil cases); *Nelson v. Bank of Mississippi*, 498 So.2d 365 (Miss. 1986) (same); *Life & Cas. Ins. Co. v. Walters*, 200 So. 732 (Miss. 1941) (same).

 OPINIONS BELOW

The August 31, 1995 order of the Supreme Court of Mississippi dismissing the petitioner's appeal is unreported and is reproduced in the appendix to this petition, p. 1. The related August 18, 1995, July 10, 1995, and June 5, 1995 orders of the Supreme Court of Mississippi are unreported and are reproduced in Pet. App. 3, 4, and 6, respectively. The December 14, 1994 order of the Chancery Court of Benton County terminating the parental rights of petitioner is unreported and is reproduced at Pet. App. 8.

JURISDICTION

The judgment of the Supreme Court of Mississippi dismissing the petitioner's appeal was issued on August 31, 1995. Pet. App. 1. The mandate of the Supreme Court of Mississippi, which is dated September 21, 1995, confirms that the date of the dismissal was August 31, 1995. Pet. App. 2. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257. Because this petition involves a challenge to the uniform practice of the Supreme Court of Mississippi that precludes in forma pauperis civil appeals in all cases, this petition is being served on the Attorney General of Mississippi. See Rule 29.4(c) of the Rules of this Court.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution, which reads in relevant part as follows:

Amendment XIV:

. . . . No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner M.L.B. and respondent S.L.J. had been married as wife and husband, but were divorced on June 9, 1992, with their two children remaining in the custody of S.L.J., their father. Less than three months later, on September 4, 1992, S.L.J. remarried, this time to respondent J.P.J. Just over one year later, on November 15, 1993, respondents S.L.J. and J.P.J. filed this case in the Chancery Court of Benton County, Mississippi, seeking to terminate the parental rights of petitioner M.L.B., who is the natural mother of the children, and to have J.P.J. take her place by adopting the children. M.L.B. responded with a counterclaim seeking primary custody of the children and seeking to have S.L.J. held in contempt of court for his refusal to permit reasonable visitation.

Under Mississippi law, a person's parental rights cannot be terminated absent clear and convincing evidence that the parent either abandoned or abused the child or is so unfit as to warrant termination. Miss. Code Ann., §§ 93-15-103, 93-15-109. Despite this high burden of proof, the Chancery Court, after a contested trial on the merits, issued an order effective December 12, 1994, entered nunc pro tunc on December 14, 1994, terminating the parental rights of petitioner M.L.B. and in her stead allowing J.P.J. to adopt the children. Pet. App. 8. In the order, the Chancellor cited no specific evidence to support the decision, but merely issued a conclusory statement parroting the statutory language. Pet. App. 9-10.

In Mississippi, an appeal of right can be taken from all lower court judgments, civil as well as criminal. The appeal is to be filed initially with the state Supreme

Court, which determines after briefing whether to retain the case for decision or to send it to the intermediate Mississippi Court of Appeals. Rules 16, 17, M.R.A.P.

Petitioner M.L.B. filed a timely notice of appeal to the Mississippi Supreme Court on January 11, 1995. Pet. App. 13. Although she paid the \$100 filing fee for the appeal, she was unable to obtain the funding to pay the remaining costs required for the appeal to proceed. The Clerk of the Chancery Court estimated the cost of preparing and transmitting the record to be \$2,352.36, which included \$1,900.00 for the transcript (950 pages at \$2.00 per page), \$438.00 for the other papers in the record (219 pages at \$2.00 per page), \$4.36 for binders, and \$10.00 for mailing. Pet. App. 15. Under Mississippi law, the advance payment of these fees is a prerequisite to proceeding with an appeal. Rules 10(b)(1)-(2), 11(b)(1), M.R.A.P.¹

¹ Rule 11(b)(1), M.R.A.P., requires the petitioner to pay in advance for the transcript as well as other necessary portions of the record. The per page costs of the transcript and the papers from the record are set by statute. Miss. Code Ann. §§ 25-7-1, 25-7-13(6). Rule 10(b)(2), M.R.A.P., requires that a transcript be prepared if the appellant "intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence." In this case, the primary error that the petitioner intended to urge on appeal was that the Chancery Court's decision terminating her parental rights was unsupported by, and contrary to, the evidence presented. This is denoted in the statement of issues for appeal, which was filed in the Chancery Court pursuant to Mississippi practice. Rule 10(c), M.R.A.P., provides a procedure for preparing the record "[i]f no stenographic report or transcript . . . is available," but this procedure applies only if the court reporter's notes are lost or stolen or if the court reporter failed to transcribe an important portion of any trial or hearing. Luther T. Munford, *Mississippi*

On July 10, 1995, the Mississippi Supreme Court issued an order requiring the appellant, within fourteen days, to comply with certain prerequisites before the appeal could proceed. Pet. App. 4. The appellant met all of these requirements, except that of paying the \$2,352.36 in appeal costs. Instead, on July 24, 1995 – fourteen days after the Court's July 10 order – she filed in the Chancery Court of Benton County a motion for leave to appeal in forma pauperis. Pet. App. 17. Attached to that motion was an affidavit of indigency showing that her limited financial means rendered her unable to pay the appeal costs. On July 27, 1995, she filed in the Supreme Court of Mississippi a motion to suspend rules, for leave to appeal in forma pauperis, and to brief the issue of in forma pauperis appeals. Pet. App. 19.

Appellate Practice, § 7.6 (1995). Rule 10(d), M.R.A.P., permits parties to an appeal to forego the transcript if they can agree on a written "statement of the case . . . setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented," but that was simply not an option in the present case, which involved a protracted and hotly contested evidentiary battle. As this Court noted in the context of a criminal case, "[a] defendant who claims the right to a free transcript does not, under our cases, bear the burden of proving inadequate such alternatives as may be suggested by the State or conjured up by a court in hindsight." *Britt v. North Carolina*, 404 U.S. 226, 230 (1971). *See also*, *Mayer v. City of Chicago*, 404 U.S. 189, 190, 195, 198 (1971) (where a criminal defendant appealed on sufficiency of evidence grounds, he "ma[d]e out a colorable need for a complete transcript" and the burden was on his opponent to demonstrate that an alternative would suffice for an effective appeal).

These two motions raised the federal constitutional issues that are now being presented to this Court. The July 24 Chancery Court motion, which was attached to and incorporated in the July 27 Mississippi Supreme Court motion, noted that Mississippi Supreme Court precedent prohibited in forma pauperis appeals in civil cases. Pet. App. 17-18, citing, *Nelson v. Bank of Mississippi*, 498 So.2d 365 (Miss. 1986); *Life & Cas. Ins. Co. v. Walters*, 200 So. 732 (Miss. 1941). However, the motion contended that the failure to permit the appeal because of the inability to pay the appeal costs, coming in a case involving the termination of the fundamental rights of a parent, would violate both the state and federal constitutions. More specifically, the motion stated:

[W]here the State's judicial processes are invoked to secure so severe an alteration of a litigant's fundamental rights – the termination of the parental relationship with one's natural child – basic notions of fairness, justice, of equal protection under the law, and of substantive and procedural due process, protections guaranteed by this State's Constitution and the Constitution of the United States, require that a person be afforded the right of appellate review though one is unable to pay the costs of such review in advance.

Pet. App. 18.

The July 27 Supreme Court motion incorporated the July 24 Chancery Court motion, and added that the termination of parental rights "implicates a fundamental interest protected both by the Fourteenth Amendment to the U.S. Constitution and Article 3, Section 14 of the Mississippi Constitution." Pet. App. 20. It further stated:

The denial because of the indigency of the appellant of the right to review in a case involving such a . . . fundamental interest . . . appears to be a violation of the requirement of due process and a denial of equal protection under the law. . . .

Id., citing, *Santosky v. Kramer*, 455 U.S. 745, 758-759 (1982), and *Lassiter v. Department of Social Services*, 452 U.S. 18, 27 (1981). Accordingly, the federal issues were properly raised by these two motions in the Mississippi courts, one of which was filed in the Chancery Court and both of which were filed in the Mississippi Supreme Court. See, *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. 155, 159 n.5 (1980).

On August 18, 1995, the Supreme Court of Mississippi issued an order denying the motion to suspend rules, for leave to appeal in forma pauperis, and to brief the issue of in forma pauperis appeals. The Court's sole basis for denying the motion was the following:

The appellant claims he [sic] is unable to pay the costs of appeal and that the Court should suspend the rules and allow the appellant to proceed in forma pauperis. The motion asks permission to brief the issue of in forma pauperis appeals. The right to proceed in forma pauperis in civil cases exists only at the trial level. *Moreno v. State*, 637 So.2d 200 (Miss. 1994). See also *Nelson v. Bank of Mississippi*, 498 So.2d 365 (Miss. 1986); *Life and Casualty Ins. Co. v. Walters*, 190 Miss. 761, 772-74, 200 So. 732, 733-34 (1941). The Court finds that the motion should be denied.

Pet. App. 3. On August 31, 1995, the Supreme Court of Mississippi ordered the appeal finally dismissed. Pet. App. 1-2. This petition follows.²

REASONS FOR GRANTING THE WRIT

Section I of the remainder of this petition discusses the importance of the federal question at issue here, as well as the conflict between the decision of the Supreme Court of Mississippi and the reasoning of at least two of this Court's prior decisions. Section II discusses the conflict between, on one hand, the decision of the Supreme

² Throughout this litigation, the petitioner has been represented by pro bono counsel. Danny Lampley originally began representing the petitioner when he was a staff attorney for North Mississippi Rural Legal Services (NMRLS). Because of the petitioner's poverty, she was eligible for representation by that organization. After Mr. Lampley left NMRLS for private practice during the course of the Chancery Court proceedings, he retained the case pro bono because NMRLS did not have a sufficient number of attorneys for someone else to take over the case. Although Mr. Lampley later asked NMRLS to pay the appeal costs, and although Rule 1.8(e)(2) of the Mississippi Rules of Professional Conduct permitted NMRLS to do so, it did not because of constraints on its own budget. This is denoted in the record, in Exhibit B to the modified motion for leave to withdraw from representation, which was filed in the Mississippi Supreme Court so that NMRLS could withdraw after having determined that it was not in a position financially to carry the appeal. The Mississippi Supreme Court permitted NMRLS to withdraw from the case. Pet. App. 6. Because of the importance of the constitutional issue in this case, the American Civil Liberties Union of Mississippi is paying for the expense of filing this petition for certiorari with this Court.

Court of Mississippi and, on the other, the decisions of several other state supreme courts and at least one federal court of appeals. Before turning to those, however, it is important to note that even though this case involves private litigants, the Supreme Court of Mississippi's decision to dismiss the petitioner's appeal for nonpayment of the fees implicates state action and is therefore reviewable under the Fourteenth Amendment. This is clear from a number of cases in which this Court has reviewed state appellate procedures under the Fourteenth Amendment in cases between private litigants. *See, e.g., Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988); *Lindsey v. Normet*, 405 U.S. 56 (1972).

I. THE DECISION OF THE SUPREME COURT OF MISSISSIPPI RAISES AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW, AND CONFLICTS WITH THE REASONING OF THIS COURT'S DECISIONS IN *GRIFFIN v. ILLINOIS*, 351 U.S. 12 (1956), AND *BODDIE v. CONNECTICUT*, 401 U.S. 371 (1971).

Under its precedent and practice, as explained in the August 15, 1995 order in this case, the Mississippi Supreme Court does not permit any sort of in forma pauperis civil appeals. This is true no matter the importance of the interest involved. Payment for preparation of the record and the transcript must be made in advance, M.R.A.P. 11(b)(1), and sometimes runs into the thousands of dollars, as in the present case. The Mississippi Supreme Court's inflexible practice precludes any consideration of whether a prospective appellant can afford to pay the relevant fees. Moreover, it prevents consideration

not only of whether an appellant should be required to pay any fees at all, but also consideration of partial measures, such as whether an appellant should be required to pay only a portion of the fees, or whether an appellant should be required to pay all of the fees, but in installments. While the Mississippi Supreme Court's practice may not raise constitutional problems in many civil cases, it does here, where the fundamental rights of a parent's relationship to her children are at issue.

Over the years, this Court has issued a series of decisions relating to the right of access to courts of those who are not sufficiently well off financially to pay the fees and costs normally charged by the court systems. These decisions are at odds with the ruling of the Supreme Court of Mississippi in the present case.

In *Griffin v. Illinois*, 351 U.S. 12 (1956), this Court noted that a state is not required by the Constitution to provide an appeal, but went on to hold that where a state does so in criminal cases, it also must provide indigent persons a transcript, or its equivalent, at state expense so they can take advantage of the appeal option irrespective of their financial poverty. This result, said the Court in *Griffin*, is compelled by the due process and equal protection clauses of the Fourteenth Amendment. *Id.* at 18-20. In its opinion, the Court stated:

There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance.

Id. at 18.

In cases after *Griffin*, this Court has invalidated a number of state practices and statutes that deny indigent criminal defendants access to effective appeals because of their inability to pay for transcripts. Among these cases is *Mayer v. Chicago*, 404 U.S. 189 (1971), which held that an indigent had the right to provision of a transcript for appeal in a case where he was faced not with imprisonment, but merely with a \$500 total fine for two misdemeanor offenses.

Fifteen years after *Griffin*, this Court's decision in *Boddie v. Connecticut*, 401 U.S. 371 (1971), extended much of the rationale of *Griffin* to civil cases involving fundamental rights. *Boddie* held that the due process clause does not permit a sixty dollar court costs fee to be imposed, as a condition for filing a civil court divorce petition, upon those who cannot afford it. As Justice Harlan's opinion for the Court in *Boddie* explained: "In *Griffin* it was the requirement of a transcript beyond the means of the indigent that blocked access to the judicial process." 401 U.S. at 382. Connecticut's \$60 divorce filing fee does the same thing, said the Court in *Boddie*, adding that "the rationale of *Griffin* covers this case." 401 U.S. at 382. While *Griffin* was predicated both upon the due process and equal protection clauses, *Boddie* relied specifically upon the due process clause, holding that it is violated by the application to indigents of a monetary fee that prevents them from access to the courts in a matter involving a fundamental interest such as marriage:

[G]iven the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship,

due process does prohibit a state from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages.

401 U.S. at 374. The Court in *Boddie* also explained that its decision was premised on the fact that resort to the courts was the only means by which people could seek lawful dissolution of their marriages. *Id.* at 376-377.

The decision of the Supreme Court of Mississippi in the present case conflicts with the rationales of *Griffin* and *Boddie*. As in *Griffin*, the petitioner here was prevented from taking an appeal of right – an appeal that is available to others – because she cannot afford the fees for preparing the transcript and the record. Her interest – the interest of a parent in her natural and lawful relationship with her child – is one of the most important interests that can be adjudicated in a court of law. It is at least equivalent to the marriage relationship in *Boddie*, may well be as important as the interest in physical liberty implicated by *Griffin*, and is far more important than the monetary fine and misdemeanor conviction involved in *Mayer*. This Court in *Lassiter v. Department of Social Services*, 452 U.S. 18, 24 (1991), noted that the parent's interest in resisting a termination of parental rights is a "commanding" one, and this Court's decision in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), described the interest of "persons faced with forced dissolution of their parental rights" as a "fundamental liberty interest." As Justice Stevens has noted:

A woman's misconduct may cause the State to take formal steps to deprive her of her liberty. The State may incarcerate her for a fixed term

and also may permanently deprive her of her freedom to associate with her child. . . . Although both deprivations are serious, often the deprivation of parental rights will be the more grievous of the two.

Lassiter v. Department of Social Services, 452 U.S. at 59 (Stevens, J., dissenting).

The present case also is like *Boddie* in the sense that – just as the courts in Connecticut were the only means for seeking a lawful divorce – a chancery court adjudication is the *only* means by which a natural parents' rights can be terminated under Mississippi law, and an appeal is the *only* means by which an aggrieved parent can challenge such a termination. Absent such an appeal, a Mississippi chancery court decision has the same effect as the trial court decision in *Santosky* – the "decision terminating parental rights is *final* and irrevocable." 455 U.S. at 745 (emphasis in original).

Moreover, under Mississippi law, the appeal plays an integral role in insuring that parental rights are not wrongfully terminated. Consistent with this Court's ruling in *Santosky*, Mississippi has, by statute, adopted the clear and convincing standard of proof before any termination can be ordered, Miss. Code Ann. § 93-15-109. The Mississippi Supreme Court has jealously guarded that standard through detailed appellate review of the evidence. In discussing the clear and convincing standard in parental termination cases, the Court said: "This Court has not been reluctant to reverse the lower court when the required burden of proof has not been met." *Vance v. Lincoln County DPW*, 582 So.2d 414, 417 (Miss. 1991).

The Mississippi Supreme Court's searching review has been exemplified in a number of cases, including *Petit v. Holifield*, 443 So.2d 874 (Miss. 1984), where the Court discussed the proof regarding the natural father, who was the defendant in that case:

[He] does . . . come close [to meeting the clear and convincing standard] and is 'teetering' on the brink. . . . [If] circumstances continue without improvement over a substantial period of time in the future [his parental rights should be terminated]. . . . He is hardly an ideal parent.

Id. at 878-879. Despite the closeness of that case and the parental deficiencies of the natural father, the Mississippi Supreme Court in *Petit* reversed the Chancery Judge's finding of clear and convincing evidence, holding that the proof – while close – did not meet the required standard.

These cases demonstrate that, in Mississippi, the appeal from a termination of parental rights is not simply a formality, but instead is a meaningful opportunity for a parent to challenge the evidence and the lower court's findings and, quite possibly, to regain the parental relationship with his or her child. This would be particularly true in the present case, where the petitioner contested the respondent's evidence and presented compelling evidence of her own, and where the Chancery Court's termination order contained no discussion of the evidence and no specific factual findings to support the termination. Pet. App. 8. For someone like the petitioner, the appeal of right provided by Mississippi law is likely her best and last hope to retain her rights as a parent.

Returning to the discussion of *Boddie*, it is, of course, true that *Boddie* did not involve an appeal. But its invocation of the *Griffin* rationale – which did involve an appeal – demonstrates that the Fourteenth Amendment concerns underlying both cases apply also to a situation such as the present case, where a civil defendant facing deprivation of the fundamental rights of a parent is precluded from access to an appellate court that is open by right to those who can afford it. Indeed, in *Lindsey v. Normet*, which is a civil case, this Court specifically noted that “[w]hen an appeal is afforded . . . it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating [the Fourteenth Amendment].” 405 U.S. at 77.

This is consistent with the opinion by then-Justice Rehnquist for this Court in *Ross v. Moffitt*, 417 U.S. 600 (1974), which explained that the *Griffin* line of cases involves the right of an indigent person to get his or her foot in the appellate courthouse door. According to the Court in *Ross*, those cases “stand for the proposition that a State cannot arbitrarily cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons.” 417 U.S. at 607. While this Court's opinion in *Ross* held that the Fourteenth Amendment does not require the provision of counsel for a discretionary second appeal within a state system or a petition for certiorari to this Court, it specifically contrasted the basic sort of access to appellate courts represented by *Griffin* with the distinct line of right-to-counsel cases:

The fact that an appeal *has* been provided does not automatically mean that a State then acts

unfairly by refusing to provide counsel to indigent defendants at every stage of the way. . . . Unfairness results only if indigents are singled out by the State and denied *meaningful access* to the appellate system because of their poverty.

Id. at 611 (first emphasis in original, second emphasis added). Thus, added the Court in *Ross*:

[The Fourteenth Amendment] does require that the state appellate system be "free of unreasoned distinctions," *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966), and that indigents have an adequate opportunity to present their claims fairly within the adversary system.

Id. at 612.

Indigents clearly have a right to access to existing appellate avenues even in situations where they do not have a right to appointed counsel. Indeed, the right of access to appellate courts through provision of a transcript to those who otherwise cannot afford it is far broader than any right to counsel. Compare, *Mayer v. Chicago* (transcript must be provided to indigent seeking to appeal a misdemeanor conviction with no sentence of imprisonment and only a \$500 fine) with *Scott v. Illinois*, 440 U.S. 367 (1979) (no right to counsel for a misdemeanor offense that does not lead to imprisonment), and *Long v. District Court of Iowa*, 385 U.S. 192 (1966) (transcript of habeas corpus hearing must be provided to indigent seeking to appeal denial of habeas relief) with *Murray v. Giaratano*, 481 U.S. 551 (1987) (no right to counsel on state habeas corpus review, even in death penalty cases).

Because the decision of the Supreme Court of Mississippi in the present case cuts off access to the appellate courts for indigents, in a case involving the fundamental rights of a parent, it conflicts with the reasoning of the *Griffin* line of cases and of *Boddie v. Connecticut*.

Beyond that, even if the Mississippi Supreme Court's decision were deemed not necessarily to conflict with those cases, it nevertheless raises an important issue of federal constitutional law that should be addressed by this Court. While *Griffin*, *Boddie*, and the rationale explained in *Ross* all bear on this issue, this Court has never decided a case raising the precise question of access to an appellate court in a civil matter involving a fundamental right such as that implicated by a termination of parental rights.

Certainly, it did not do so in *Ortwein v. Schwab*, 410 U.S. 656 (1973), which upheld the imposition upon an indigent of a \$25 filing fee required to seek judicial review of an administrative reduction in old-age assistance, or in *United States v. Kras*, 409 U.S. 434 (1973), which concluded that the Fourteenth Amendment permits the application of a \$50 bankruptcy filing fee to an indigent. In both cases, the Court specifically noted that the interests involved are not of the same constitutional magnitude as the marriage interest implicated in *Boddie*. *Ortwein*, 410 U.S. at 659; *Kras*, 409 U.S. at 445. Moreover, *Ortwein* involved only a \$25 filing fee, while *Kras* involved a \$50 filing fee, which could be paid in several installments of \$1.28 per week. 409 U.S. at 449. These cases are a far cry from present case, which involved fundamental parental rights that can be asserted on

appeal only by payment of fees of over \$2,000, which must be paid all at once and all in advance.

This Court did address, in *Lassiter*, what it called the "commanding" interest that a parent has in his or her parental rights. 452 U.S. at 27. In that case, the Court held that due process does not require appointed counsel for indigent parents in every case involving a potential termination of parental rights. However, said the Court, in light of the importance of the interest, there will be some parental termination cases in which due process will require the appointment of counsel. *Id.* at 31-32. Accordingly, said the Court, there must be in the state courts, at the very least, a case-by-case decision as to "whether due process calls for the appointment of counsel for indigent parents in termination proceedings," with the question "to be answered in the first instance by the trial court, subject, of course, to appellate review." *Id.* at 32. Four dissenting Justices contended that due process requires the appointment of counsel in all such cases.

Lassiter's holding does not by itself answer the question of whether a transcript must be provided to indigent appellants in all parental termination cases. As noted previously in this petition, the right to access, through a transcript on appeal when necessary, is far broader than any right to counsel. As this Court explained in *Ross v. Moffitt*, the poor are not permitted all of the advantages in the court system possessed by those who are wealthier, but the poor are constitutionally entitled at least to access to the same courts that are open to the wealthy. In other words, when fundamental rights are at stake, a poor person is entitled to get his or her foot in the same courthouse door that is open to those with more money,

even if he or she is not always able to do it with an attorney.

Even in terms of the right to counsel, *Lassiter* held that the interest affected by the potential termination of parental rights is sufficiently important that state courts must, under the due process clause, either provide counsel to indigents in all cases or make a case-by-case determination as to whether the appointment of counsel is necessary. Because of the importance of this interest, it follows that due process, at the very least, requires states to make a case-by-case determination of whether a free or partially-funded transcript is necessary to insure that indigent people have the opportunity to commence an appeal that otherwise is available by right to those who are wealthier.

Unfortunately, the Mississippi Supreme Court's long-standing precedent and practice precludes even the possibility of allowing an indigent to appeal without paying the costs of preparing the transcript and record. By applying that inflexible rule to the present case, that Court has made it clear that even in cases involving termination of fundamental rights, such as the fundamental rights of a parent, the Court will not permit the appeals of poor people who cannot afford to pay for the record and the transcript. Because the Mississippi Supreme Court will not consider this even on a case-by-case basis, its decision in the present case appears to conflict with the principles in *Lassiter*.

Moreover, as stated previously, it conflicts with the reasoning in *Griffin* and *Boddie*, and raises an important

federal constitutional issue that should be resolved by this Court.

II. THE DECISION OF THE SUPREME COURT OF MISSISSIPPI CONFLICTS WITH DECISIONS OF THE SUPREME COURTS OF OHIO, MICHIGAN, ARIZONA, VERMONT, AND FLORIDA, AND OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Contrary to the Supreme Court of Mississippi's decision in this case, the Supreme Courts of Ohio, Michigan, and Arizona all have held that the due process and equal protection clauses of the Fourteenth Amendment require that indigent parents be furnished a transcript, without the necessity of payment that otherwise would be necessary, in order to appeal adverse lower court decisions terminating parental rights. *State ex rel. Heller v. Miller*, 399 N.E.2d 66 (Ohio 1980); *Reist v. Bay County Circuit Judge*, 241 N.W.2d 55 (Mich. 1976); *In the Matter of Appeal in Pima County Juvenile Action No. J-46735*, 540 P.2d 642 (Ariz. 1975).

Beyond that, decisions of the Supreme Courts of Vermont and Florida have held that the due process and equal protection clauses of the Fourteenth Amendment require that indigent litigants be furnished a transcript so they can appeal adverse lower court decisions ordering that they be involuntarily committed to mental institutions. *In Re L.G.*, 603 A.2d 381 (Vermont 1992); *Shuman v. State*, 358 So.2d 1333 (Fla. 1978). While these two cases do not deal precisely with the issue of parental termination, their reasoning is at odds with that of the Mississippi Supreme Court, which has inflexibly refused to permit in

forma pauperis civil appeals regardless of the interest involved. Moreover, this Court's constitutional decisions indicate that parental termination rulings, like involuntary civil commitments, implicate fundamental constitutional interests that require protection under the due process clause. *See, Santosky v. Kramer*, 455 U.S. at 754-756, 764, 768 (holding that due process requires a clear and convincing standard of proof before terminating a person's parental rights, and citing *Addington v. Texas*, 455 U.S. 745, 754 (1979), which held that the same standard is required for involuntary civil commitments). Given the constitutional similarities between the two types of proceedings, the decisions of the Supreme Courts of Vermont and Florida conflict with that of the Supreme Court of Mississippi.

Also, the United States Court of Appeals for the Third Circuit has held that the due process clause of the Fourteenth Amendment mandates that indigent civil defendants in Delaware be allowed to take advantage of the option to appeal adverse justice of the peace judgments to Superior Court, where a trial de novo is available, without meeting the state's surety bond requirement, which otherwise forces civil defendants to post a bond equaling the amount of the judgment plus costs. *Lecates v. Justice of the Peace Court No. 4*, 637 F.2d 898 (3rd Cir. 1980). Although *Lecates* did not involve the fundamental matter of termination of parental rights, but only involved a civil debt stemming from foreclosure of an automobile, and although it dealt with a de novo appeal from a justice of the peace court to a trial court of record rather than an appeal from a trial to an appellate

court, its basic holding is that a state cannot erect financial barriers that prevent civil defendants from taking the same appellate avenues available to others. While the petitioners here do not seek such a broad ruling, instead focusing on the constitutional interest surrounding the specific nature of a termination of parental rights, it is nevertheless clear that the Third Circuit's decision directly conflicts with the decision of the Supreme Court of Mississippi in the present case.

In this connection, it is important to note that many other states have required the provision of transcripts for indigents in civil appeals of an important nature, but have done so on grounds of state statutes, rules, or constitutional provisions, rather than on federal constitutional grounds. *See, e.g., Grove v. State*, 897 P.2d 1252, 1259 (Wash. 1995).

With respect to the federal constitutional issue, the conflicts described in this section of the petition should be resolved by this Court.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of Mississippi.

Respectfully Submitted,

*ROBERT B. McDUFF
771 North Congress Street
Jackson, Mississippi 39202
(601) 969-0802

DANNY LAMPLEY
ACLU/M Cooperating Attorney
Post Office Box 7245
Tupelo, Mississippi 38802
(601) 840-4006

MARINA HSIEH
Boalt Hall School of Law
University of California
Berkeley, CA 94720
(510) 642-4474

Counsel for Petitioner
*Counsel of Record

App. 1

IN THE SUPREME COURT OF MISSISSIPPI

ORDER

(Filed Aug. 31, 1995)

The Clerk's Dismissal of the following cases is hereby approved:

1. ERIC GRUBBS A/K/A "HEAVY" A/K/A
"BIG BOY" A/K/A ERIC BERNARD
GRUBBS
v.
STATE OF MISSISSIPPI
Case Number: 92-KA-01226
2. M. L. B.
v.
S. L. J., INDIVIDUALLY, AND AS NEXT
FRIEND OF THE MINOR CHILDREN, S. L. J.
AND M. L. J., AND HIS WIFE, J. P. J.
Case Number: 95-TS-00052
3. ANTHONY WILLIAMS
v.
ROSE GIBSON
Case Number: 95-TS-00453
4. BRANDEN C. LIGHTFOOT
v.
S. W. PUCKETT, ET AL.
Case Number: 95-TS-00580

The costs in each case are assessed to the appellant.

SO ORDERED, this the 29th day of August, 1995.

/s/ Michael Sullivan
MICHAEL SULLIVAN,
JUSTICE
FOR THE COURT

App. 2

[SEAL]

MANDATE

From The

SUPREME COURT OF MISSISSIPPI

To the Benton County Chancery Court - GREETINGS:

On 31st Day of August, 1995, in proceedings held in the Courtroom, Carroll Gartin Justice Building, the City of Jackson, Mississippi, the Supreme Court of Mississippi entered a final judgment as follows:

Supreme Court Case #95-TS-00052-

Trial Court Case #93A006

M. L. B.

vs.

S. L. J., Individually, and as Next Friend of the Minor Children, S. L. J. and M. L. J., and his wife, J. P. J.

Appeal dismissed according to M.R.A.P. 2. Costs are assessed to the appellant. Order entered.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

WITNESS, the Hon. Armis E. Hawkins, Chief Justice of the Supreme Court of Mississippi; also the signature of the clerk and the Seal of said Court hereunto affixed, in the City of Jackson, on September 21, 1995, A.D.

/s/ Linda Stone
Supreme Court Clerk

App. 3

IN THE SUPREME COURT OF MISSISSIPPI
NO. 95-TS-00052

M.L.B.

Appellant

v.

S.L.J., INDIVIDUALLY,
AND AS NEXT FRIEND OF
THE MINOR CHILDREN,
S.L.J. AND M.L.J.,
AND HIS WIFE, J.P.J.

Appellees

ORDER

(Filed Aug. 18, 1995)

This matter came before the Court on the Motion to Suspend Rules, for Leave to Appeal In Forma Pauperis, and to Brief Issue of In Forma Pauperis Appeals. The appellant claims that he is unable to pay the costs of appeal and that the Court should suspend the rules and allow the appellant to proceed in forma pauperis. The motion asks permission to brief the issue of in forma pauperis appeals. The right to proceed in forma pauperis in civil cases exists only at the trial level. *Moreno v. State*, 637 So. 2d 200 (Miss. 1994). See also *Nelson v. Bank of Mississippi*, 498 So. 2d 365 (Miss. 1986); *Life and Casualty Ins. Co. v. Walters*, 190 Miss. 761, 772-74, 200 So. 732, 733-34 (1941). This Court finds that the motion should be denied.

IT IS THEREFORE ORDERED that the Motion to Suspend Rules, For Leave to Appeal In Forma Pauperis, and to Brief Issue of In Forma Pauperis be, and hereby is, denied.

SO ORDERED, this, the 15th day of August, 1995.

/s/ Michael Sullivan
FOR THE COURT

App. 4

IN THE SUPREME COURT OF MISSISSIPPI

NO. 95-TS-00052

M.L.B.

APPELLANT

v.

**S.L.J., INDIVIDUALLY,
AND AS NEXT FRIEND OF
THE MINOR CHILDREN,
S.L.J. AND M.L.J.,
AND HIS WIFE, J.P.J.**

APPELLEES

ORDER

(Filed July 10, 1995)

The docket in this cause shows that the Appellant has substantially failed to prosecute this appeal as indicated below:

1. Appellant has failed to pay the appeal costs to lower court clerk.
2. Appellant has not filed the designation of record and/or filed the Certificate of Compliance with the lower court clerk.

The docket also shows that the Clerk did, by letter of June 23, 1995, give Appellant written notice of the default.

THEREFORE, IT IS ORDERED:

That the Clerk shall notify the Appellant of this deficiency by mailing to the appellant a copy of this Order. The Appellant shall have fourteen (14) days from the date of entry of this Order within which to correct the deficiency, failing in which this appeal shall stand dismissed, which shall be noted upon the record by the Clerk.

App. 5

No extensions of time shall be granted beyond this period within which to cure any deficiency.

ORDERED, this the 10th day of July, 1995.

/s/ Michael Sullivan
FOR THE COURT

App. 6

IN THE SUPREME COURT OF MISSISSIPPI

NO. 95-TS-00052

M.L.B.

Appellant

v.

**S.L.J., INDIVIDUALLY,
AND AS NEXT FRIEND OF
THE MINOR CHILDREN,
S.L.J. AND M.L.J.,
AND HIS WIFE, J.P.J.**

Appellees

ORDER

(Filed Jun. 5, 1995)

This matter came before the Court on the Motion for Leave to Withdraw from Representation and the Modified Motion for Leave to Withdraw from Representation. In the original motion, Danny Lampley and North Mississippi Rural Legal Services, counsel of record for the Appellant requested permission to withdraw as counsel for the Appellant. In the modified motion, Danny Lampley requests that he be allowed to continue representing the Appellant while allowing North Mississippi Rural Legal Services to withdraw. Lampley also requests thirty (30) days to allow the Appellant to get her finances in order or to obtain new counsel.

This Court finds that North Mississippi Rural Legal Services should be allowed to withdraw and that Danny Lampley should continue to represent the Appellant. Since the modified motion was filed on March 6, 1995, and the case has been suspended pending a ruling on the motion pursuant to M.R.A.P. 31(e), this Court finds that

App. 7

the request for thirty (30) days to obtain financing or new counsel should be denied without prejudice.

IT IS THEREFORE ORDERED that North Mississippi Rural Legal Services be allowed to withdraw as counsel for the Appellant. Danny Lampley is to continue to represent the Appellant.

IT IS FURTHER ORDERED that the request for thirty (30) days to obtain financing or new counsel be, and hereby is, denied without prejudice.

SO ORDERED, this, the 30 day of May, 1995.

/s/ Michael Sullivan
FOR THE COURT

IN THE CHANCERY COURT OF
BENTON COUNTY, MISSISSIPPI

SAMMY LEE JAMES,
INDIVIDUALLY,
AND AS NEXT FRIEND OF THE MINOR
CHILDREN, SAMUEL LEE JAMES AND
MELISSA LEANN JAMES, AND HIS PLAINTIFF
WIFE JANET (PANNELL) JAMES
VS. CAUSE NO. 93-A-006
MELISSA LUMPKIN BROOKS DEFENDANT

DECREE OF ADOPTION

(Filed Dec. 14, 1994)

THIS DAY, a day of the regular December 1994 term of the Chancery Court of Benton County, Mississippi, there came on to be and was heard the above cause on Complaint for Adoption of Minor Children filed by Sammy Lee James, Individually, and as Next Friend of the Minor Children, Samuel Lee James and Melissa Leann James, and his Wife, Janet (Pannell) James; Response, Affirmative Defenses, and Counter-Complaint to Complaint for Adoption of Minor Children, and in the Alternative, for Other Relief filed by the Defendant, Melissa Lumpkin Brooks; and on proof in open Court.

And it appears to the satisfaction of the Court that it has jurisdiction over the parties and subject matter herein.

It further appears that the parties herein are all resident citizens of Benton County, Mississippi, and have

been such for more than ninety (90) days prior to the filing of the Complaint for Adoption.

It further appears that the minor children named in the Complaint to be adopted are Samuel Lee James, age nine (9) years and born April 10, 1985, and Melissa Leann James, age seven (7) and born February 13, 1987. Further, that the Plaintiff, Sammy Lee James, is the natural, biological father of the minor children, Samuel Lee James and Melissa Leann James, and Janet (Pannell) James is the wife of Sammy Lee James, having been married on the 4th day of September, 1992. Melissa Lumpkin Brooks is the natural biological mother of the minor children, Samuel Lee James and Melissa Leann James.

It further appears to the Court, based upon the proof, testimony, and evidence presented at the trial of this cause held on August 18, 1994, November 2, 1994, and December 12, 1994, that there has been a substantial erosion of the relationship between the natural mother, Melissa Lumpkin Brooks, and the minor children, Samuel Lee James and Melissa Leann James, which has been caused at least in part by Melissa Lumpkin Brooks' serious neglect, abuse, prolonged and unreasonable absence or unreasonable failure to visit or communicate with her minor children, as specified by Section 93-15-103(3)(e) of the Mississippi Code of 1972, as Amended.

It further appears to the Court, having considered the stability of environment, ties between the prospective adopting parent and the children, moral fitness of the parents and the home, school and community record of the children, that it would be in the best interest of the

minor children, Samuel Lee James and Melissa Leann James, if the Complaint for Adoption of said minor children was granted.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, as follows:

(1) Pursuant to Section 93-17-7 and Section 93-15-103 of the Mississippi Code of 1972, as Supplemented, the parental rights of the Defendant, Melissa Lumpkin (James) Brooks, the natural, biological mother of the minor children, Samuel Lee James and Melissa Leann James, be and same are hereby forever terminated, due to the substantial erosion of the relationship between the natural mother, Melissa Lumpkin Brooks, and the minor children, Samuel Lee James and Melissa Leann James, which has been caused at least in part by Melissa Lumpkin Brooks' serious neglect, abuse, prolonged and unreasonable absence or unreasonable failure to visit or communicate with her minor children.

(2) That the best interests of the minor children, Samuel Lee James and Melissa Leann James, would be promoted and enhanced by granting their adoption by Janet (Pannell) James, their stepmother and wife of their natural father, Sammy Lee James.

(3) That the Plaintiffs herein have met their burden of proof in this cause by clear and convincing evidence.

(4) That the Plaintiffs, Sammy Lee James and Janet (Pannell) James, were married on the 4th day of September, 1992, and that the Plaintiff, Janet (Pannell) James, has become very attached to the minor children, Samuel Lee James and Melissa Leann James, and has given them the

care, love and affection as if said children were her own natural children. That the said Janet (Pannell) James is a fit, proper and suitable person to adopt said children and share with the natural father the responsibility of their care, custody and control and it would be to the best interest, health and welfare of the said minor children if said adoption were approved.

(5) That the said minor children shall inherit from and through the adopting parent, Janet (Pannell) James, and shall likewise inherit from the other children of the said adopting parent to the same extent and under the same conditions as provided for the inheritance between brothers and sisters of the full blood by the laws of descent and distribution of the State of Mississippi, and the adopting parent and her other children shall inherit from the said minor children, just as if said children had been born to the said Janet (Pannell) James in lawful wedlock; the minor children and the adopting parent and the adoptive kindred are vested with all of the rights, powers, duties and obligations respectively, as if said children had been born to the adopting parent in lawful wedlock, including the rights existing by virtue of Section 11-7-13 of the Mississippi Code of 1972; provided, however, that the inheritance by and through the adopted child shall be governed as aforesaid.

(6) That the names of the adopted children shall remain on the Birth Certificates as Samuel Lee James and Melissa Leann James.

(7) That all parental rights of the natural mother, Melissa Lumpkin (James) Brooks, shall be terminated, and the natural mother and natural maternal kindred of the children shall not inherit by and through the child,

except this provision shall not apply to the natural father, Sammy Lee James, who retains all rights, privileges and obligations of natural parenthood and custody; however, nothing shall restrict the right of any person to dispose of property under a Last Will and Testament.

(8) The adopting parent, Janet (Pannell) James, shall be reflected as the mother of said minor children, Samuel Lee James and Melissa Leann James, on the Birth Certificates of said children.

(9) That a certified copy of the judgment of adoption be furnished to the Bureau of Vital Statistics of the State of Mississippi, together with the appropriate certificate of Clerk of this Court, as provided by Section 93-17-21 of the Mississippi Code of 1972, and other laws applicable and pertaining thereto.

(10) That these proceedings be kept in a confidential file as provided by law.

(11) That the Guardian Ad Litem in this cause, James W. Pannell, Attorney at Law, Ripley, Mississippi, be and same is hereby awarded a fee of Five Hundred Dollars (\$500.00), same assessed as a portion of the court costs in this proceeding.

(12) Plaintiff shall be taxed with all court costs in this proceeding.

SO ORDERED, ADJUDGED AND DECREED, this the 12th day of December, 1994, entered nunc pro tunc this the 14th day of December, 1994.

/s/ Anthony T. Farese
CHANCELLOR

IN THE CHANCERY COURT OF
BENTON COUNTY, MISSISSIPPI

SAMMY LEE JAMES, individually,
and as next friend of the minor
children, S.L.J. and M.L.J.,
and his wife, JANET (PANNELL) JAMES PLAINTIFF/
COUNTER-
DEFENDANTS

VS. CAUSE NO. 93-A-006
MELISSA LUMPKIN BROOKS DEFENDANT/
COUNTER-PLAINTIFF

NOTICE OF APPEAL

(Filed Jan. 11, 1995)

BY THIS NOTICE, Defendant/Counter-Plaintiff Melissa Lumpkin Brooks appeals to the Supreme Court of Mississippi from the final Decree of Adoption, and termination of her parental rights, entered on December 12, 1994.

Respectfully Submitted,
MELISSA LUMPKIN BROOKS

BY: /s/ Danny Lampley
DANNY LAMPLEY
ATTORNEY FOR
APPELLANT
POST OFFICE BOX 7245
432 MAGAZINE,
SUITE 100
TUPELO, MS 38802-7245
(601) 840-4006
MS BAR #8717

App. 14

OF COUNSEL:
NORTH MS RURAL LEGAL SERVICES
P.O. BOX 767
OXFORD, MS 38655
(601) 234-8731

[Certificate of Service Omitted in Printing]

App. 15

IN THE CHANCERY COURT OF
BENTON COUNTY, MISSISSIPPI

SAMMY LEE JAMES, INDIVIDUALLY, PLAINTIFFS
AND AS NEXT FRIEND OF THE MINOR
CHILDREN, SAMUEL LEE JAMES AND
MELISSA LEANN JAMES, AND HIS WIFE,
JANET (PANNELL) JAMES

VS. CAUSE NO. 93-A-006
MELISSA LUMPKIN BROOKS DEFENDANT

CLERK'S ESTIMATE OF COSTS

(Filed Jan. 20, 1995)

Court Reporter's estimate	
950 pages @\$2.00 per page _____	\$1900.00
Chancery Clerk's estimate	
219 pages @ \$2.00 per page _____	\$ 438.00
Binders _____	4.36
Mailing _____	<u>10.00</u>
TOTAL: _____	\$2352.36

This the 20th day of January, 1995.

/s/ Mark M. Ormon
Chancery Court Clerk

SEAL

cc: Linda Stone, Clerk
MS Supreme Court
P. O. Box 249
Jackson, MS 39205

Danny Lampley
Attorney at Law
John Glenn Bldg., Suite 100
432 Magazine Street
P. O. Box 7245
Tupelo, MS 38802-7245

IN THE CHANCERY COURT OF
BENTON COUNTY, MISSISSIPPI

S.L.J., and his wife, J.(P.)J.,
individually and as next friends
of the minor children, PLAINTIFFS/COUNTER
S.L.J. and M.L.J. DEFENDANTS

VS. CAUSE NO. 93-A-006

M.L.B. DEFENDANT/COUNTER-
 PLAINTIFF

MOTION FOR LEAVE TO APPEAL
IN FORMA PAUPERIS

(Filed Jul. 24, 1995)

COMES NOW the appellant, M.L.B., by counsel, and moves the trial court for leave to appeal in forma pauperis, and would show:

1) Appellant is unable, despite having had an ample amount of time to do so, to pay the costs of her appeal in advance. In addition to the statements made in her Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis, attached hereto as Exhibit A, Appellant is entirely without credit which would permit her to borrow the necessary funds; has no family members with the financial ability to advance the costs; and her counsel, though he would be permitted by Rule 1.8(e)(2) of the Rules of Professional Conduct, simply does not have the funds available to advance on her behalf.

2) Counsel is well aware of prior Mississippi Supreme Court precedent to the effect that a civil litigant may not appeal in forma pauperis; namely, *Nelson v. Bank of Mississippi*, 498 So.2d 365 (Miss. 1986) and *Life & Cas.*

Insurance Co. v. Walters, 190 Miss. 761, 200 So. 732 (1941). However, where the State's judicial processes are invoked to secure so severe an alteration of a litigant's fundamental rights – the termination of the parental relationship with one's natural child – basic notions of fairness, justice, of equal protection under the law, and of substantive and procedural due process, protections guaranteed by this State's Constitution and the Constitution of the United States, require that a person be afforded the right of appellate review though one is unable to pay the costs of such review in advance.

WHEREFORE, PREMISES CONSIDERED, appellant requests that this court set a hearing at which she will be afforded an opportunity to argue in support of her motion to appeal in forma pauperis despite prior state Supreme Court rulings to the contrary.

THIS the 24th day of July, 1995.

Respectfully Submitted,
M.L.B., Appellant

/s/ Danny Lampley
DANNY LAMPLEY
ATTORNEY FOR
APPELLANT
P.O. BOX 7245
TUPELO, MS 38802
(601) 840-4006
MS BAR #8717

[Certificate of Service Omitted in Printing]

[Exhibits Omitted in Printing]

IN THE SUPREME COURT OF MISSISSIPPI

M.L.B. APPELLANT
VS. CASE NO 95-TS-0052

S.L.J., Individually, and as Next
Friend of the minor children, S.L.J. and
M.L.J., and his wife, J.P.J. APPELLEES

MOTION TO SUSPEND RULES, FOR LEAVE
TO APPEAL IN FORMA PAUPERIS, AND TO
BRIEF ISSUE OF IN FORMA PAUPERIS APPEALS

COMES NOW the appellant, M.L.B., by counsel, and moves this Court to suspend the operation of the Mississippi Rules of Appellate Procedure, for good cause to be shown pursuant to M.R.A.P. 2(c), for leave to appeal in forma pauperis and for leave to brief the issue regarding whether a civil litigant in a parental rights termination proceeding should be allowed to appeal in forma pauperis, and would show:

1) In response to the Order of this Court entered July 10, 1995 counsel for appellant has filed a Designation of the Record (copy attached hereto as Exhibit 1), a Statement of the Issues (copy attached hereto as Exhibit 2), and a Motion for Leave to Appeal in Forma Pauperis (copy attached hereto as Exhibit 3), all filed in the trial court on July 24, 1995.

2) As stated in her Motion for Leave to Appeal in Forma Pauperis filed in the trial court appellant is unable to pay the costs of her appeal in advance; is unlikely to be able to pay the costs in the foreseeable future; and by reason of the inability to pay some \$2300.00 is in all probability not going to be able to obtain appellate

review of the lower court's decision to terminate her parental rights.

3) The inability to obtain appellate review of a decision involving such an extreme measure as the termination of a parent's relationship with her natural children solely because the appellant cannot pay for the transcript and costs is fundamentally unfair, unjust, and violative of the Mississippi Constitution. See Article 3, Sections 11, 14, and 24.

4) Termination of the relationship between parent and child implicates a fundamental liberty interest protected both by the Fourteenth Amendment to the U.S. Constitution and Article 3, Section 14 of the Mississippi Constitution.

5) The denial because of the indigency of the appellant of the right of review in a case involving such a fiercely guarded fundamental interest – an interest "plain beyond the need for multiple citation" that a natural parent's "desire for and right to 'the companionship, care, custody, and management of his or her children' " is "more precious than any property right," *Santosky v. Kramer*, 455 U.S. 745, 758-9, 71 L.Ed.2d 599, 610 (1982), citing *Lassiter v. Department of Social Services*, 452 U.S. 18, 27, 68 L.Ed.2d 640, 101 S.Ct. 2153 (1981) – appears to be a violation of the requirement of due process and a denial of equal protection under the law and raises a substantial question regarding whether this Court should continue to maintain its rule prohibiting civil in forma pauperis appeals either in all cases or in cases in which fundamental interests are at stake.

WHEREFORE, PREMISES CONSIDERED, appellant requests that this Court suspend the operation of the Mississippi Rules of Appellate Procedure pursuant to M.R.A.P. 2(c) and permit the lower court to hear and make a record concerning her Motion for Leave to Appeal in Forma Pauperis; and in the event of an adverse decision, permit the appellant to cause the record of the proceedings on the sole issue to be first separately sent up for review and a ruling by this Court before the appellant is required to pay the costs to have the entire designated record sent up; or, in the alternative, it is requested that this Court in the first instance consider the issue of an appeal in forma pauperis in parental rights termination cases, rather than have the matter first heard in the lower court, and if this Court should so elect, allow the appellant to fully brief the specific issue in this Court.

THIS the 27th day of July, 1995.

Respectfully Submitted,
M.L.B., Appellant

/s/ Danny Lampley
DANNY LAMPLEY
ATTORNEY FOR
APPELLANT
P.O. BOX 7245
TUPELO, MS. 38802
(601) 840-4006
MS BAR #8717

[Certificate of Service Omitted in Printing]
[Exhibits Omitted in Printing]
